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IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)
WEDNESDAY, THE FIFTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR
PRESENT
THE HON'BLE MR JUSTICE S.ANANDA REDDY
WRIT PETITION NO : 2748 of 1997

Between:
G.Venkateswarlu, S/o. G.Subbarayudu, aged 29 years,
unemployee, R/o. Marripadu, Nellore District.

..... PETITIONER

AND

1. The Chairman and Disciplinary Authority, Pinakini Grameena Bank,
   Head Office, A.K.Nagar, Nellore.
2. The Board of Directors and Appellate Authority , Rep. By its Secretary,
   Pinakini Grameena Bank, A.K.Nagar, Nellore.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to call for the records connected with the proceedings of the 2nd respondent in Ref. 017/396/IF/PD/96 dated 03/10/1996 confirming that of the 1st respondent in Proceedings Ref.002/396/IF/PD/96 dated 08/04/1996 and quash the same as illegal, arbitrary and unconstitutional by issuing a Writ of Certiorari or any other writ or order or direction and consequently direct the respondents to reinstate the petitioner as Messenger in Pinakini Grameena Bank.

Counsel for the Petitioner: MR.C.V.BHASKAR REDDY

Counsel for the Respondents: MR.K.SRINIVASA MURTHY

The Court made the following :

O R D E R:

This writ petition is filed by the petitioner praying for issue of writ of Certiorari calling for the records of the proceedings of the second respondent dated 03.10.1996 confirming the order of the first respondent in proceedings No.REF.002/396/IF/PD/96 dated 08.04.1996, under which the petitioner was dismissed from service.

2. According to the petitioner he worked as part time Messenger-cum-Sweeper during the year 1986. Thereafter he applied for regular appointment as Messenger in the year 1987. Thereafter, as per the scheme of the respondent-bank selections were made in which the petitioner was selected and was appointed as Messenger on 24.08.1987. In pursuance of the said appointment, the petitioner joined duty on 01.12.1987. Further, his probation was also declared on 23.11.1988. While so, on 04.03.1992 the petitioner was charge sheeted framing the following charges.

a) He had furnished false date of birth in the application
b) He had made a false declaration in the application as to the correctness of the information furnished in the application;
c) He had altered the date of birth in the TC as 9.7.1967 from 9.7.1969;
d) He had gained entry into the employment of the Bank by submitting a false certificate and a false declaration.

The sum and substance of the charges is that the petitioner furnished a false date of birth certificate altering his date of birth from 09.07.1969 to 09.07.1967. Thereafter, a regular Enquiry Officer was appointed. The Enquiry Officer, after conducting enquiry submitted report on 20th February 1995 in which the Enquiry Officer found that the charges were proved against the petitioner. Pursuant to the said enquiry report, the first respondent, who is Disciplinary Authority issued a show cause notice, and after considering the explanation of the petitioner dated 28.04.1995,

passed the impugned order dated 08.04.1996 dismissing the petitioner from service. Thereafter, the petitioner preferred an appeal before the second respondent. The second respondent also, after considering the material on record, agreed with the order of the Disciplinary Authority and accordingly dismissed the appeal. Hence, the present writ petition.

3. The learned counsel for petitioner contended that the Enquiry Officer relied upon certain documents, which were produced during the course of enquiry, which is contrary to the guidelines. The learned counsel also contended that the Enquiry Officer failed to furnish copy of the original enquiry report as well as the copies of additional documents that were produced during the course of enquiry. Therefore, the enquiry conducted by the enquiry officer was vitiated by the violation of the principles of natural justice. The learned counsel also contended that the petitioner had produced the extract of the birth certificate issued by the Mandal Revenue Officer, showing his date of birth as 08.11.1967. If the said date of birth is taken into account the petitioner was major by the date when the petitioner was appointed. Therefore, the petitioner's services cannot be terminated or removed by the respondent-bank. It is also the contention of the learned counsel for the petitioner that the transfer certificate produced by the petitioner showing the date of birth as 09.07.1967 was issued by the school authorities and the said certificate bears the signature of the Head Master of the school, serial number and other particulars, as found by the Enquiry Officer or the witness of the management, who has verified with the original from the school. The learned counsel also contended that the management witness, who verified the school records, found that there are corrections in the admission register. Therefore, the alteration, if any, cannot be attributed to the petitioner. Under the above circumstances it was contended that

the order of dismissal passed by the first respondent as confirmed by the second respondent, is illegal and unsustainable.

4. The counsel appearing for the respondents, on the other hand, supported the orders of the respondents. It is contended that as per the enquiry report there is a categorical finding that all the documents that are submitted by the management were furnished to the petitioner, but in so far as the preliminary enquiry report, a copy of which was sought for by the petitioner, was not produced, as the said report was the basis on which the charges were framed. Even otherwise, it is contended that the contents of the said report are reflected in the charges. Therefore, it is for the petitioner to answer the charges by producing necessary evidence showing that the date of birth furnished by him is his correct date of birth. Having failed to prove that the date of birth that was produced by him was the correct date of birth, as reflected from the school records, it is not open to the petitioner to contend that even as per the birth extract he was a major by the date of appointment. Therefore, the dismissal order is just and proper.

5. The learned counsel also contended that though a plea was raised as to the non-furnishing of the copies of the additional documents filed on behalf of management during the course of enquiry before the Enquiry Officer, such plea was not at all raised either before the Enquiry officer or even when objections were filed as to the enquiry officer's report before the first respondent. Therefore, it is not open to the petitioner to contend that the respondents violated the principles of natural justice by non-furnishing the copies of the additional documents relied upon. It is contended that admittedly the petitioner produced a certificate containing false date of birth in order to make himself eligible for appointment in the respondent-bank. When this fact came to the notice of the Bank, proceedings were initiated and when the

petitioner was asked to produce proof of the said date of birth, instead of obtaining any evidence from the school authorities, the petitioner had obtained birth extract from the Mandal Revenue officer, showing a different date of birth than the one for which he had produced evidence. Therefore, it is contended that there is no merit in the contention of the petitioner.

6. Heard both sides and considered the material on record.

7. Admittedly, the petitioner worked as part time Messenger-cum-Sweeper in the respondent-bank. Thereafter, under the scheme formulated by the bank the petitioner made his application on 01.04.1987. Thereafter, selections were conducted, in which the petitioner was selected and an appointment order was issued on 24.08.1987, and accordingly the petitioner joined as Messenger on 01.12.1987. To prove his age, the petitioner produced transfer certificate, showing his date of birth as 09.07.1967. Later, the respondent authorities came to know that the said date of birth, furnished by the petitioner, was not his correct date of birth. Hence, proceedings were initiated and an Enquiry Officer was appointed. The Enquiry Officer reported that the date of birth furnished by the petitioner was not the correct one, as according to the Enquiry Officer the correct date of birth of the petitioner is 09.07.1969. If the said date of birth is taken into account, the petitioner was ineligible being minor on the date of application. During the course of enquiry the petitioner did not produce any evidence showing his date of birth, as produced by him, is correct. In spite of that, the petitioner now relied upon the alleged date of birth extract, issued by the Mandal Revenue Officer, which shows that his date of birth is 8/11/1967. The Disciplinary Authority, after giving opportunity for filing objections as to the enquiry report and considering the objections, passed orders of

dismissal from service. In the objections filed on 28.04.1995, the petitioner stated that he was not provided with original report. Further, no additional documents can be produced after commencement of the enquiry and the management witness was biased. There was no objection, as was raised now, in the objections as to the non-furnishing of the additional documents. With reference to the non-furnishing of the original investigation report, as it was basis for the charges framed, the charges themselves would speak to the contents of the investigation report and in fact the petitioner was given opportunity to prove the correctness of his date of birth as was produced by him. The petitioner was not able to satisfy the authorities and on the other hand, relied on the birth extract, which shows a different date of birth. Therefore, the Disciplinary Authority passed the impugned orders, dismissing the petitioner from service. The said order was confirmed in appeal also. When once the petitioner failed to raise any objection before the Disciplinary Authority as to the non-furnishing of any of the documents, it is not open to the petitioner to raise such objection now at this stage. Further, it is also not clear what are the documents that are relied upon, which are filed during the course of enquiry before the Enquiry Officer. With reference to the objection as to the filing of the additional documents during the course of enquiry, no circular or any rule has been placed before this Court showing that the management is not entitled to file any additional documents during the course of enquiry. If any documents are filed during the course of enquiry, the petitioner would get sufficient opportunity not only to look into those documents but also to meet the contents of such documents. Therefore, no prejudice would be caused if any additional documents were filed during the course of enquiry.

8. From the material on record it is clear that the petitioner was not able to produce any evidence to prove that his

date of birth, which he has produced while making application for appointment of Messenger, is his correct date of birth. In the absence of any such evidence, it is not open to the petitioner to rely upon any other material to show that he was major by the date of his appointment, and therefore, the order of dismissal cannot be passed against him. The contentions raised by the petitioner in the present petition clearly devoid of merit. Therefore, the petitioner is not entitled to any relief.

9. The writ petition is, accordingly, dismissed. No costs.

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S.ANANDA REDDY,J.

Date: 15th September 2004.

*BSB/KVH

ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To

1. The Chairman and Disciplinary Authority, Pinakini Grameena Bank, Head Office, A.K.Nagar, Nellore.

2. The Secretary, Board of Directors and Appellate Authority , Pinakini Grameena Bank, A.K.Nagar, Nellore.

3. Two CD copies.